



1 request of his trial attorney to file a notice of appeal[,] or if the attorney made a  
2 timely promise to file a notice of appeal.” *People v. Sanchez*, 1 Cal. 3d 496, 500  
3 (1969). Petitioner, however, provides no evidence that he asked his attorney to file  
4 an appeal, or that his attorney made a promise to do so. Thus, on this record,  
5 Petitioner is not entitled to relief for his late notice of appeal.

6 Second, to the extent Petitioner suggests that his multiple prison transfers  
7 warrant equitable tolling, Petitioner is wrong. (Obj. at 2, Ex. C.) “In general, the  
8 difficulties attendant on prison life, such as transfers between facilities . . . and an  
9 inability to secure court documents, do not by themselves qualify as extraordinary  
10 circumstances.” *Corrigan v. Barbary*, 371 F. Supp. 2d 325, 330 (W.D.N.Y. 2005).  
11 Moreover, it is Petitioner’s burden to establish equitable tolling, *Miranda v.*  
12 *Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002), and he fails to show or otherwise  
13 explain *how* his lack of access to his legal materials made it virtually impossible  
14 for him to timely file a federal habeas petition.

15 Furthermore, Petitioner’s request for counsel is denied. The Court finds that  
16 appointment of counsel is not necessary to avoid due process violations in the  
17 instant action. See *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986)  
18 (“[T]he sixth amendment right to counsel does not apply in habeas corpus  
19 actions.”); *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986) (“Indigent state  
20 prisoners applying for habeas corpus relief are not entitled to appointed counsel  
21 unless the circumstances of a particular case indicate that appointed counsel is  
22 necessary to prevent due process violations.”). Further, Petitioner has not shown  
23 that he has been unable to articulate his positions because of the complexity of the  
24 claims. See *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (observing that  
25 the decision to appoint counsel turns on petitioner’s ability to articulate claims in  
26 light of the complexity of the issues and the likelihood of success on the merits).

27 ///

28 ///

1 Accordingly, IT IS ORDERED THAT:

- 2 1. The Report and Recommendation is approved and accepted;  
3 2. Judgment be entered denying the Petition and dismissing this action  
4 with prejudice; and  
5 3. The Clerk serve copies of this Order on the parties.

6 Additionally, for the reasons stated in the Report and Recommendation, the  
7 Court finds that Petitioner has not made a substantial showing of the denial of a  
8 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*  
9 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate  
10 of appealability.

11  
12 DATED: \_\_April 23, 2013\_\_



14  
15 HON. PHILIP S. GUTIERREZ  
16 UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28